



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 05-97

March 23, 2006

Petition of Milford Water Company for approval by the Department of Telecommunications and Energy, pursuant to G.L. c. 164, § 14, and G.L. c. 165, § 2, to issue long-term debt securities in an aggregate amount of up to \$1,000,000.

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Petitioner

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FOR: TOWN OF MILFORD
Limited Participant

I. INTRODUCTION

On December 29, 2005, Milford Water Company (“Milford” or “Company”), pursuant to G.L. c. 164, § 14, and G.L. c. 165, § 2, filed with the Department of Telecommunications and Energy (“Department”) a petition for approval and authorization to issue long-term debt in an aggregate amount of up to \$1,000,000 at an interest rate of 6.75 percent per annum.

Pursuant to notice duly issued, the Department held a public and evidentiary hearing on February 15, 2006. The Company presented the testimony of Henry C. Papuga, manager and clerk of the Company. The Town of Milford’s motion for limited participation was granted. The evidentiary record consists of eleven exhibits and two responses to record requests.

II. DESCRIPTION OF THE PROPOSED FINANCING

The Company seeks authority to issue the note in an aggregate principal amount of up to \$1,000,000 in the form of secured long-term debt (“Note”) (Exh. MWC-1, at 2-3). Milford states that the \$1,000,000 Note will be placed with the Medway Cooperative Bank at an interest rate of 6.75 percent per annum (*id.* at 3). The Company further states that while the Note is amortized over a 25-year period, Milford would make a “balloon payment” in ten years on the remaining unpaid balance of the outstanding Note (Tr. at 18). The Company’s witness testified that its existing long-term debt issued pursuant to Milford Water Company, D.P.U. 91-257 (1992), becomes due in 2012 (Tr. at 16-17). At the same time, depending if prevailing interests rate are equal to or less than 6.75 percent, Milford would re-finance all of its then-outstanding debt, including the Note (Tr. at 17-18). Conversely, if prevailing interest

rates in 2012 are higher than the proposed Note's 6.75 percent interest rate, the Company would allow the Note to mature in ten years (id.).

Milford states that the Note will be used to retire approximately \$500,000 in short-term debt, with the \$500,000 balance being used to fund permanent additions and betterments¹ to the Company's plant (Exh. DTE 1-2; Tr. at 11-13). The Company states that the Note will be secured in the form of a first mortgage on Milford's property acquired after 1992 (i.e., property that the Company acquired after the issuance of the 1992 long-term debt issuance) (Exh. MEC-1, at 4; Tr. at 24-32). Milford testified that it would incur a pre-payment penalty only if the Note is paid-off within the first three years of its issuance (Tr. at 18-19).

III. CAPITAL STRUCTURE

As of September 30, 2005, Milford reported a total utility plant balance of \$21,511,691 (Exh. MWC-1, Att. 3). After removing \$7,061,028 in accumulated depreciation, and \$5,443,858 in contributions in aid of construction, the Company determined that its net utility plant in service is \$9,006,805 (id.).

As of the same date, Milford's total capitalization consisted of: (1) \$1,487,500 in long-term debt; (2) \$374,100 in preferred stock; and (3) \$8,260,889 in common equity (Exh. MWC-1, Att. 3). On the same date, Milford's common equity balance consisted of

¹ Milford states that it has a prioritized list of betterments that need to be made to the Company's plant (Exh. DTE 1-2; Tr. at 12). Such items include, but are not limited to, repainting the interior of three water tanks that are suffering from delamination; and structural problems with the Company's Highland Street tanks that need to be investigated for repair or replacement (Exh. DTE 1-2; Tr. at 12).

\$400,000 in common stock and \$7,860,889 in retained earnings (Exh. MWC-1, Atts. 3, 4).

Milford's corresponding capital structure ratios were 14.7 percent long-term debt, 3.7 percent preferred stock, and 81.6 percent common equity (Exh. MWC-1, Atts. 3, 4).

IV. STANDARD OF REVIEW

In order for the Department to approve the issuance of stocks, bonds, coupon notes or other types of long-term indebtedness² by a water company, the Department must determine that the proposed issuance meets two tests. First, the Department must assess that the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14.³ Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing Fitchburg Gas & Electric Light Co. v. Department of Public Utilities, 394 Mass. 671, 678 (1985) ("Fitchburg I"). Second, the Department must determine whether the Company has met the net plant test.⁴ Colonial Gas Company, D.P.U. 84-96 (1984).

The Supreme Judicial Court has found that, for the purposes of G.L. c. 164, § 14, "reasonably necessary" means "reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency." Fitchburg II at 836, citing Lowell Gas Light

² Long-term refers to periods of more than one year after the date of issuance. G.L. c. 164, § 14.

³ The provisions of G.L. c. 164, § 14 are applicable to water companies pursuant to G.L. c. 165, § 2.

⁴ The net plant test is derived from G.L. c. 164, § 16.

Co. v. Department of Public Utilities, 319 Mass. 46, 52 (1946). In cases where no issue exists about the reasonableness of management decisions regarding the requested financing, the Department limits its Section 14 review to the facial reasonableness of the purpose to which the proceeds of the proposed issuance will be put. Canal Electric Company et al., D.P.U. 84-152, at 20 (1984); see e.g., Colonial Gas Company, D.P.U. 90-50, at 6 (1990). The Fitchburg I and II and Lowell Gas cases also established that the burden of proving that an issuance is reasonably necessary rests with the company proposing the issuance, and that the Department's authority to review a proposed issuance, "is not limited to 'perfunctory review.'" Fitchburg I at 678; Fitchburg II at 841, citing Lowell Gas at 52.

Regarding the net plant test, a company is required to present evidence that its net utility plant (original cost of capitalizable plant, less accumulated depreciation) equals or exceeds its total capitalization (the sum of its long-term debt and its preferred and common stock outstanding) and will continue to do so following the proposed issuance. Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

Where issues concerning the prudence of the company's capital financing have not been raised or adjudicated in a proceeding, the Department's decision in such a case does not represent a determination that any specific project is economically beneficial to a company or to its customers. In such circumstances, the Department's determination in its Order may not in any way be construed as ruling on the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing. See e.g., Boston Gas Company, D.P.U. 95-66, at 7 (1995).

V. ANALYSIS AND FINDINGS

A. “Reasonably Necessary” Standard

Milford stated that the proposed issuance of a Note of up to \$1,000,000 is in part for the purposes of refinancing its short-term debt (Exhs. MWC-1, at 4-5; DTE 1-3; Tr. at 11). The remaining proceeds of the Note will be used to fund future capital expenditures to utility plant (Exhs. MWC-1, at 4-5; DTE 1-2; Tr. at 12). The Department has found that issuing debt for the purpose of paying down short-term debt is a “legitimate utility purpose” as contemplated by G.L. c. 164, § 14. Berkshire Gas Company, D.T.E 03-89, at 9 (2004); Southern Union Company, D.T.E. 03-64, at 8 (2004); Blackstone Gas Company, D.T.E. 03-65, at 4 (2003); Western Massachusetts Electric Company, D.T.E. 02-49, at 10 (2003); New England Power Company, D.P.U. 95-101, at 11 (1995). Likewise, the Department has found that funding utility operations is a customary purpose of securities issuances. Massachusetts Electric Company, D.T.E. 04-51, at 12 (2004); Southern Union Company, D.T.E. 03-3, at 18 (2003); Berkshire Gas Company, D.P.U. 96-64, at 8-9 (1996). Accordingly, the Department finds that Milford’s proposed issuance of the Note in an aggregate amount up to \$1 million is reasonably necessary to accomplish a legitimate purpose in meeting the Company’s service obligations in accordance with G.L. c. 164, § 14. The Department further finds it appropriate to grant the Company authorization to issue the Note on or prior to March 31, 2006.

B. Net Plant Test

In Colonial Gas Company, D.P.U. 84-96, at 8 (1984), the Department required that any company requesting approval to issue new stock, bonds, or other securities demonstrate that its net utility plant supports the additional amount of financing. The purpose of the net plant test is both to protect ratepayers from excessive rates associated with overcapitalization and to assure the creditors of a utility that the company has sufficient tangible assets to cover its liabilities. Boston Gas Company, D.T.E. 03-40, at 321 (2003); Colonial Gas Company, D.P.U. 1247-A at 7 (1982); Report of the Department of Public Utilities Relative to the Capitalization of Gas and Electric Companies, Senate Document No. 315, at 8-15 (January 1922). Under the net plant test, a company must present evidence demonstrating that net utility plant (i.e., utility plant less accumulated depreciation) is equal to or greater than the company's total capitalization (i.e., the sum of debt, preferred stock and common stock outstanding), thereby supporting the additional amount of financing pursuant to G.L. c. 164, § 16. Southern Union Company, D.T.E. 04-36, at 9-10 (2004); D.T.E. 03-89, at 15-16, 23 (2004); Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

In demonstrating that the Company has met the net plant test, Milford presented evidence that its net utility plant as of September 30, 2005, was \$9,006,805, while the sum of its common stock, preferred stock, and long-term debt is \$2,261,600 (\$1,487,500 in long-term debt, \$374,100 in preferred stock, and \$400,000 in common stock) (Exh. MWC-1, Att.3).⁵

⁵ The Department excludes retained earnings from the net plant test. Southern Union Company, D.T.E. 04-36, at 9-10 (2004).

The Department finds that the Company's current plant investment is, therefore, sufficient to support the issuance of up to \$1,000,000 in long-term debt as prescribed by G.L. c. 164, § 16.

Issues concerning the prudence of the Company's capital financing have not been raised in this proceeding, and the Department's decision in this case does not represent a determination that any project is economically beneficial to the Company or its ratepayers. The Department's determination in this Order shall not be construed as a ruling relative to the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, the Department

VOTES: That the issuance and sale, from time to time, on or prior to March 31, 2006, by Milford Water Company, of long-term debt securities, in an amount not to exceed \$1,000,000, is reasonably necessary for the purposes for which such issuance has been authorized pursuant to G.L. 164, § 14; and it is

ORDERED: That the issuance prior to March 31, 2006, by Milford Water Company, of long-term debt securities, in an amount not to exceed \$1,000,000, is reasonably necessary for the purpose for which such issuance has been authorized; and it is

FURTHER ORDERED: That such authorized long-term debt securities issued by Milford Water Company shall carry a fixed interest rate not to exceed an effective rate of 6.75 percent per annum; and it is

FURTHER ORDERED: That the net proceeds from such sale of such securities shall be used for the purposes set forth herein; and it is

FURTHER ORDERED: That the Secretary of the Department will, within three days of this Order, cause a certified copy of this Order to be filed with the Secretary of the Commonwealth.

By Order of the Commission,

\s\

Judith F. Judson, Chairman

\s\

James Connelly, Commissioner

\s\

W. Robert Keating, Commissioner

\s\

Paul G. Afonso, Commissioner

\s\

Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.